

Fifty-fifth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1270

Introduced by

Representative Berg

Senator Mutch

1 A BILL for an Act to create and enact a new section to chapter 65-01 of the North Dakota
2 Century Code, relating to decisions made by the workers compensation bureau; to amend and
3 reenact sections 65-02-11, 65-02-20, 65-02-27, and subsection 4 of section 65-08-01 of the
4 North Dakota Century Code, relating to process and procedure used by the bureau, dispute
5 resolution under the bureau's managed care program, the workers' adviser program, and
6 procedures for filing a claim under an extraterritorial coverage agreement; and to repeal section
7 65-01-14 of the North Dakota Century Code, relating to initial decisions made by the workers
8 compensation bureau; and to provide an effective date.

9 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

10 **SECTION 1.** A new section to chapter 65-01 of the North Dakota Century Code is
11 created and enacted as follows:

12 **Decisions by bureau - Disputed decisions.** The following procedures must be
13 followed in claims for benefits, notwithstanding any provisions to the contrary in chapter 28-32:

- 14 1. The bureau shall send a copy of each initial claim form filed with the bureau to the
15 claimant's employer, by regular mail, along with a form for the employer's
16 response, if the employer's response has not been filed at the time the claim is
17 filed. Failure of the employer to file a response within fourteen days from the day
18 the response form was mailed to the employer constitutes the employer's
19 admission that the information in the claim form is correct.
- 20 2. The bureau may conduct a hearing on any matter within its jurisdiction by informal
21 internal review of the information of record.
- 22 3. The bureau may issue a notice of decision for any decision made by informal
23 internal review and shall serve the notice of decision on the parties by regular mail.

A notice of decision must include a statement of the decision, a short summary of the reason for the decision, and notice of the right to reconsideration.

4. A party has thirty days from the day the notice of decision was mailed by the bureau in which to file a written request for reconsideration. The request must state the alleged errors in the decision and the relief sought. The request may be accompanied by additional evidence not previously submitted to the bureau. The bureau shall reconsider the matter by informal internal review of the information of record. Absent a timely and sufficient request for reconsideration, the notice of decision is final and may not be reheard or appealed.

5. Within sixty days after receiving a request for reconsideration, the bureau shall serve on the parties by regular mail a notice of decision reversing the previous decision or, in accordance with the North Dakota Rules of Civil Procedure, an administrative order that includes its findings, conclusions, and order. The bureau may serve an administrative order on any decision made by informal internal review without first issuing a notice of decision and receiving a request for reconsideration.

6. A party has thirty days from the date of service of an administrative order in which to file a request for assistance from the workers' adviser program under section 65-02-27.

7. A party has thirty days, from the date of service of an administrative order or from the day the workers' adviser program mails its notice that the program's assistance is complete, in which to file a written request for rehearing. The request must specifically state each alleged error of fact and law to be reheard and the relief sought. Absent a timely and sufficient request for rehearing, the administrative order is final and may not be reheard or appealed.

8. Rehearings must be conducted as hearings under chapter 28-32 to the extent the provisions of that chapter do not conflict with this section. The bureau may arrange for the designation of hearing officers to conduct rehearings and issue recommended findings, conclusions, and orders. In reviewing recommended findings, conclusions, and orders, the bureau may consult with its legal counsel representing it in the proceeding.

1 9. Within sixty days after receiving the recommended findings, conclusions, and
2 order, the bureau shall serve on the parties, in accordance with the North Dakota
3 Rules of Civil Procedure, its findings, conclusions, and posthearing administrative
4 order.

5 10. A party may appeal a posthearing administrative order to district court in
6 accordance with chapter 65-10.

7 11. Any notice of decision, administrative order, or posthearing administrative order is
8 subject to review and reopening under section 65-05-04.

9 **SECTION 2. AMENDMENT.** Section 65-02-11 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **65-02-11. Process and procedure - Investigations - Examination of witnesses -**
12 **Costs.** ~~Process~~ Except as otherwise provided by this title, process and procedure under this
13 title shall be is governed by the provisions of chapter 28-32. The bureau may make
14 investigation in such manner and at such places as in its judgment shall be is best calculated to
15 ascertain the substantial rights of all the parties. Any member of the bureau, and any person
16 specifically designated by the bureau shall have the power to may examine witnesses and
17 records, with or without subpoena, to examine, investigate, copy, photograph, and take
18 samples at any pertinent location or facility, to administer oaths to witnesses, to require the
19 attendance of witnesses without fee whenever the testimony is taken at the home, office, or
20 place of work of such those witnesses, and generally to do anything requisite or necessary to
21 facilitate or promote the efficient administration of this title. The bureau shall pay the costs of
22 any medical examination, scientific investigation, medical or expert witness appearance or
23 report, requested or approved by the bureau, relating to a claim for benefits, shall be paid from
24 the bureau general fund.

25 **SECTION 3. AMENDMENT.** Section 65-02-20 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **65-02-20. Bureau to establish managed care program.** The bureau shall establish a
28 managed care program with a third-party administrator to effect the best medical solution for an
29 injured employee. The managed care system must allow for a third-party administrator to direct
30 the program for medical care of the injured employee upon a finding by the bureau that the
31 employee suffered a compensable injury. The managed care administrator shall operate

1 according to guidelines adopted by the bureau to ensure that an injured employee receives
2 appropriate medical treatment in a cost-effective manner. The managed care administrator
3 shall assist the bureau in the medical management of claims within the bounds of workers'
4 compensation law. If an employee, employer, or medical provider disputes the
5 recommendation of the managed care administrator, the employee, employer, or medical
6 provider may request binding dispute resolution on the recommendation. The bureau shall
7 make rules providing for the procedures for dispute resolution. Dispute resolution under this
8 section is not subject to chapter 28-32 or section ~~65-01-14~~ 1 of this Act or section 65-02-15. A
9 dispute resolution decision under this section requested by a medical provider concerning
10 payment for medical treatment already provided or a request for diagnostic tests or treatment is
11 not reviewable by any court. A dispute resolution decision under this section requested by an
12 employee is reviewable by a court only if medical treatment has been denied to the employee.
13 A dispute resolution decision under this section requested by an employer is reviewable by a
14 court only if medical treatment is awarded to the employee. The dispute resolution decision
15 may be reversed only if the court finds that there has been an abuse of discretion by the
16 dispute resolution panel. Any person providing binding dispute resolution services under this
17 section is exempt from civil liability relating to the binding dispute resolution process and
18 decision.

19 **SECTION 4. AMENDMENT.** Section 65-02-27 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **65-02-27. (Effective until July 31, 1999) Workers' adviser program.** A workers'
22 adviser program is established. The program is independent of the claims department of the
23 workers compensation bureau and activities administered through the program must be
24 administered in accordance with this title. The program must provide assistance to an injured
25 employee, including acting on behalf of an injured employee who is aggrieved by a decision of
26 the bureau, communicating with bureau staff regarding claim dispute resolution, and advising
27 an injured employee of the effect of decisions made by the bureau, the employee, or an
28 employer under this title. The bureau shall employ a director of the program, support staff for
29 the program, and other personnel determined to be necessary for the administration of the
30 program. Personnel employed to administer the program may not act as an attorney for an
31 injured employee. The bureau may not pay attorney fees to an attorney who represents an

1 injured employee in a disputed claim before the bureau unless the injured employee has first
2 attempted to resolve the dispute through the workers' adviser program. ~~An~~ A request for
3 assistance by an injured employee who contacts the program ~~for assistance~~ within the ~~appeal~~
4 ~~period after~~ for requesting a hearing on an administrative order ~~has been issued is deemed to~~
5 ~~have satisfied the requirement of~~ tolls the time period for requesting an administrative a hearing
6 ~~or an arbitration hearing~~ on that order. The period begins upon notice to the employee, sent by
7 regular mail, that the program's assistance to the employee is completed. The information
8 contained in a file established by the workers' adviser program on an injured employee's
9 disputed claim is not subject to discovery and may not be used as evidence in subsequent
10 proceedings relative to that dispute.

11 **SECTION 5. AMENDMENT.** Subsection 4 of section 65-08-01 of the North Dakota
12 Century Code is amended and reenacted as follows:

- 13 4. An employer whose employment results in significant contacts with this state shall
14 acquire workers' compensation coverage in this state unless a reciprocal
15 agreement between the states is entered which provides that the other state will
16 likewise recognize that an employment relationship entered into in this state is
17 exempted from the application of the workers' compensation law of the other state.
18 An employment has significant contacts with this state when (a) the employee
19 earns or would have been expected to earn twenty-five percent or more of the
20 employee's gross annual wage or income from that employer from services
21 rendered in this state; or (b) if no employee earns twenty-five percent of the
22 employee's gross annual income from that employment within this state, the
23 employer's gross annual payroll in a calendar year in this state is at least one
24 hundred thousand dollars. Under this subsection, an employee injured in this state
25 may elect to file a claim in this state notwithstanding that the employee had
26 another remedy in the state in which the employment was principally localized. A
27 claim filed under this subsection is subject to section 65-05-05. The time limits
28 within which the bureau shall issue a decision on a claim, as specified in ~~sections~~
29 ~~65-01-14~~ section 1 of this Act and section 65-02-08, do not begin to run for claims
30 filed under this section until the first date the bureau may begin to process the
31 claim as set forth in section 65-05-05.

1 **SECTION 6. REPEAL.** Section 65-01-14 of the North Dakota Century Code is
2 repealed.

3 **SECTION 7. EFFECTIVE DATE.** These sections apply to all claims for benefits filed
4 after July 31, 1997, regardless of the date of injury.